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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 205

J. W. FREE, PETITIONER

v.

JAMES F. BLAND

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The District Court of Upshur County, Texas, filed no written opinion in entering judgment (R. 28). The opinion of the Court of Civil Appeals for the Sixth Supreme Judicial District of Texas (R. 31) is reported at 337 S.W. 2d 805. The opinion of the Supreme Court of Texas (R. 53) is reported at 344 S.W. 2d 435.

JURISDICTION

The judgment of the Supreme Court of Texas was entered on March 8, 1961 (R. 54). A timely petition for rehearing was denied on April 5, 1961 (R. 58). The petition for certiorari was filed on July 5, 1961, and granted on October 9, 1961 (R. 59). The jurisdiction of this Court rests on 28 U.S.C. 1257(3).

QUESTION PRESENTED

Whether the Treasury Department regulations governing the nature of the interests in United States savings bonds purchased in co-ownership form effectively create an absolute right to the beneficial interest in such bonds in a surviving co-owner although Texas community property law requirements for the creation of survivorship interests are not met.

STATUTE AND REGULATIONS INVOLVED

Section 757c(a) of Title 31 U.S.C. provides:

> The Secretary of the Treasury, with the approval of the President, is authorized to issue from time to time, through the Postal Service or otherwise, United States savings bonds and United States Treasury savings certificates, the proceeds of which shall be available to meet any public expenditures authorized by law, and to retire any outstanding obligations of the United States bearing interest or issued on a discount basis. The various issues and series of the savings bonds and the savings certificates shall be in such forms, shall be offered in such amounts, subject to the limitation imposed by section 757b of this title, and shall be issued in such manner and subject to such terms and conditions consistent with subsections (b)–(d) of this section, and including any restrictions on their transfer, as the Secretary of the Treasury may from time to time prescribe.

Section 315.20(a) of Title 31 C.F.R. provides:

> No judicial determination will be recognized which would give effect to an attempted voluntary transfer inter vivos of a bond or would

defeat or impair the rights of survivorship conferred by these regulations upon a surviving coowner or beneficiary, and all other provisions of this subpart are subject to this restriction. Otherwise, a claim against an owner or coowner of a savings bond and conflicting claims as to ownership of, or interest in, such bond as between coowners or between the registered owner and beneficiary will be recognized, when established by valid judicial proceedings, upon presentation and surrender of the bond, but only as specifically provided in this subpart.

Section 315.61 of Title 31 C.F.R. provides:

If either coowner dies without the bond having been presented and surrendered for payment or authorized reissue, the survivor will be recognized as the sole and absolute owner. Thereafter, payment or reissue will be made as though the bond were registered in the name of the survivor alone (see Subpart K), except that a request for reissue by him must be supported by proof of death of the other coowner, and except further that after the death of the survivor proof of death of both coowners and of the order in which they died will be required. The presentation and surrender of a bond by one coowner for payment establishes his right to receive the proceeds of the bond, and if he should die before the transaction is completed, payment will be made to the legal representative of, or persons entitled to, his estate in accordance with the provisions of Subpart N. If either coowner dies after the bond has been presented and surrendered for authorized reissue (see § 315.47), the bond will be regarded as though reissued during his lifetime.

STATEMENT

In the years 1941 through 1945, petitioner John W. Free purchased a number of United States savings bonds, using for that purpose community funds of himself and his wife, Ida Free (R. 24). He registered the bonds in the names of himself "or" his wife (R. 24). The regulations of the Secretary of the Treasury provide that under this form of registration the persons named are co-owners of the bonds (31 C.F.R. 315.7(a)(2)), and that upon the death of one "the survivor will be recognized as the sole and absolute owner" (31 C.F.R. 315.61, *supra*, p. 3). Ida Free died testate in Texas in 1958, naming respondent James F. Bland, her son by a previous marriage, as her executor and residuary legatee (R. 11, 13–14).

Petitioner brought suit in the District Court of Upshur County, Texas, seeking a judicial declaration that upon the death of his wife he became the sole owner of the bonds and that respondent had no interest in the bonds (R. 1). Respondent claimed that, because the bonds had originally been purchased with community property, they were themselves community property and that he was entitled to a one-half interest in the bonds or was in any event entitled to a judgment against petitioner for a sum equal to one-half the value of the bonds (R. 21).

The district court ruled that petitioner was the owner of the bonds (R. 28–29). At the same time, however, the court entered judgment for respondent against petitioner for $43,517.75, one-half the value of the bonds, and declared a lien against the bonds for the amount of this judgment on the ground that

the bonds had been purchased with community funds. In substance, therefore, petitioner's claim that he was entitled to absolute ownership of the bonds was rejected.

The Court of Civil Appeals for the Sixth Supreme Judicial District of Texas reversed the judgment of the District Court insofar as it awarded respondent one-half the value of the bonds, and affirmed that judgment insofar as it found petitioner to be the owner of the bonds (R. 31–36). The court ruled that the case was controlled by the decision of the Supreme Court of Texas in *Ricks* v. *Smith*, 159 Tex. 280, 318 S.W. 2d 439, which had held that the relevant Treasury regulations, not state community property law, was determinative of the rights in United States savings bonds.

While respondent's application for a writ of error was pending in the Supreme Court of Texas, that court, in *Hilley* v. *Hilley*, 342 S.W. 2d 565, a case involving corporate securities, held that a co-ownership form of registration was not sufficient to alter the normal operation of Texas community property rules, which provide that property received in exchange for an interest in community property is itself community property. In the course of its opinion, the court overruled its prior decision in *Ricks* v. *Smith*, *supra*, at 570, 571, stating that "the Federal regulations [dealing with the ownership in United States savings bonds] do not override our local laws in matters of purely private ownership where the interests of the United States are not involved", and that accordingly savings bonds registered in the

names of a husband and a wife as co-owners should, on the death of one, be treated not as the property of the other, as provided by the regulations, but, under Texas property law, as community property. Only if a husband and wife fulfill the state formalities for partition of community property and for creation of a joint tenancy could a valid survivorship interest be created with community property, the court held. On the basis of this decision, the Texas Supreme Court reversed the judgment of the Court of Civil Appeals in this case and affirmed that of the district court (R. 53).

INTEREST OF THE UNITED STATES

In our view, the decision of the Supreme Court of Texas denies effect to duly authorized Treasury Department regulations governing survivorship interests in United States savings bonds and disregards the position with regard to the survivorship provisions to which the Treasury Department has adhered since the inception of the savings bond program.

There are now outstanding over $40 billion of savings bonds in a form providing a right of survivorship such as that involved in the present case—*i.e.*, in either the "co-owner" or "beneficiary" form of registration (31 C.F.R. 315.7(a)(2) or (3)). There are probably well over $30 billion of outstanding savings bonds in the co-ownership form alone[1]. It is reasonable to assume that a large proportion of these bonds

[1] Statistics breaking down sales in each locality by type of bond sold are not maintained by the Treasury Department. Using the national average of 80% sales of co-ownership bonds, however, it is possible to estimate the amount of co-ownership bonds outstanding in the eight community property states as roughly $3,500,000,000.

were purchased specifically to obtain the survivorship benefits which the Treasury Department has stated were created by these forms of registration. To permit the mutations of state property law to derogate from the absolute right of survivorship intended by the Federal Government would seriously detract from the appeal of savings bonds to small-scale purchasers, would probably induce many present holders to redeem their bonds, and could undermine the faith of the public in incidental representations by the Treasury concerning future security offerings—all to the detriment of government financing.

SUMMARY OF ARGUMENT

For over twenty-five years the Treasury Department has been selling United States Savings Bonds in the co-ownership form. At present approximately $30,000,000,000 of these bonds are outstanding, issued under a broad statutory authority for the Treasury to issue bonds in the form it deems best. The breadth of the legislative authorization is attributable to the legislative desire to enable the Treasury to compete effectively but not disruptively in the market for investment dollars.

A significant advantage of bonds in the co-ownership form is the provision for survivorship which enables small and inexpert investors to combine continuity of ownership spanning two lives with shared ownership during the lives of both of the owners. Equally important as an inducement to the purchase of co-ownership bonds is the simplicity and certainty of the legal relationships established and the absolute minimum of formalities required to create them.

The purpose of the pertinent Treasury Regulations is to provide these advantages for investors in co-ownership bonds throughout the country. The regulations specify clearly that "the survivor will be recognized as the sole and absolute owner" of bonds registered in the co-ownership form. They deny recognition to judicial determinations which "would defeat or impair the rights of survivorship conferred by these regulations." That the protection granted by these regulations is intended to preclude conflicting state laws is plain from the wording and history of the regulations and is reconfirmed by the Treasury's consistent interpretation of its own regulations over the last twenty-two years.

It is no less clear that the application of Texas community property law to prevent the use of community property by husband and wife together to create survivorship rights in United States savings bonds is in conflict with the Treasury regulation denying recognition to judicial determinations which "defeat or impair the rights of survivorship conferred by these regulations".

ARGUMENT

I

THE SECRETARY OF THE TREASURY IS INVESTED BY STATUTE WITH BROAD POWERS TO IMPOSE SUCH CONDITIONS UPON AND GIVE SUCH EFFECT TO SAVINGS BONDS AS HE CONSIDERS NECESSARY TO EFFECTUATE THE CONGRESSIONAL PURPOSE

Exercising its power under Article I, Section 8, of the Constitution "To borrow Money on the credit of

the United States", Congress in 1935 authorised the issuance of United States Savings Bonds, delegating to the Secretary of the Treasury broad authority to determine their characteristics:

> The various issues and series of the savings bonds * * * shall be in such forms * * * and shall be issued in such manner and subject to such terms and conditions * * * as the Secretary of the Treasury may from time to time prescribe.[2]

Congress could not have been unaware of the import of such a broad delegation. In *United States* v. *Sacks*, 257 U.S. 37, this Court described the extent of the authority granted by an earlier act in almost identical terms. The Act of September 24, 1917, Section 6, 40 Stat. 291, provided that "war savings certificates shall be in such form * * * and subject to such terms and conditions * * * as the Secretary of the Treasury may prescribe." In construing that Act, this Court had declared that war savings certificates (257 U.S. at 41)—

> provided an opportunity of investment for persons of small means, and the power to prescribe ways adequate to the purpose was given to the Secretary of the Treasury. In other words, details of execution were committed to him with power to give to the certificate * * * such character, quality and legal effect that he should consider to be efficient. * * *

Although the point was not involved in *United States* v. *Sacks, supra,* it is significant that under the 1917 authorization the Secretary of the Treasury had

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[2] 49 Stat. 20, as amended, 31 U.S.C. 757c(a).

provided, among other terms of purchase, that Liberty Bonds could be purchased either in the form of individual ownership or payable to the purchaser during his lifetime and to a named beneficiary on death.

Pursuant to the Act of 1935, the Secretary of the Treasury promulgated regulations which provide not only for the individual and beneficiary forms, but also for the purchase of United States Savings Bonds registered to co-owners. 31 CFR 315.7(a)(2).[3] The regulations state that:

> If either coowner dies without the bond having been presented and surrendered for payment or authorized reissue, the survivor will be recognized as the sole and absolute owner. * * * [31 CFR 315.61, *supra*, p. 3.]

The Treasury also specified:

> No judicial determination will be recognized which * * * would defeat or impair the rights of survivorship conferred by these regulations upon a surviving coowner or beneficiary * * *. [31 CFR 315.20, *supra*, pp. 2–3.]

While we have found no significant legislative history of either the 1917 Act or the 1935 Act bearing upon intended limits to the Secretary's authority to shape the form and legal effect of government bonds, the reenactment and amendment of the 1935 Act in 1941 are significant for two reasons. First, before the reenactment the Treasury had not only issued the regulations creating the co-ownership form for hold-

[3] The regulations in their present form apply to all of the bonds in issue in the present case except to the extent that they might restrict any rights holders of the bonds may have acquired under earlier regulations. 31 CFR 315.0, 315.93.

ing savings bonds, but had also publicly stated that the regulations were designed both to determine to whom the Treasury was obligated to tender payment and also to protect from conflicting state laws the surviving co-owner's right to enjoy the benefits of survivorship. See *infra*, p. 16. Second, the legislative history of the 1941 amendments, although not bearing directly on the validity of the survivorship provisions as interpreted by the Treasury, indicates the considerations which explain and justify the broad delegation of power to create various contract forms with differing benefits to the owners and to protect these benefits from the effects of conflicting state laws.

Representative Doughton, Chairman of the Committee on Ways and Means and sponsor of the Amendments to the 1935 Act, expressed the reasons for enlarging the Treasury's already broad discretion (87 Cong. Rec. 850):

> to issue the exact type of security which might best meet the needs of particular types of investors. The Treasury has before it a difficult and exacting task in securing the funds necessary to pay for national defense and at the same time deal fairly with the investing public and cause the least possible disruption of the investment market.

The same recognized need for broad Treasury control over savings bonds was discussed in the House hearings[4] and in the Senate and House Reports on the bill. H. Rept. No. 20, 77th Cong., 1st Sess., p. 1;

[4] Hearings Before the House Committee on Ways and Means on H.R. 2653, 77th Cong., 1st Sess., p. 6.

S. Rept. No. 41, 77th Cong., 1st Sess., p. 1. The task of floating an immense loan, at the lowest interest rates possible, in a way that would appeal to small and inexpert investors, and without disrupting the national market for investment dollars, was plainly recognized to be a task requiring the power to exercise very broad discretion in defining the terms and benefits of the bonds.

II

THE TREASURY REGULATIONS CREATE FEDERAL SUBSTANTIVE RIGHTS TO ENJOYMENT OF THE SURVIVORSHIP BENEFITS CONFERRED

The Treasury issued co-ownership bonds in order to create a highly marketable security for sale to small investors. These bonds were designed to enable the purchaser or purchasers to combine shared ownership during the time when both owners were alive, with a right of sole beneficial ownership in the survivor. Men and women of modest means would be attracted by simple and certain legal relationships, clearly stated by the United States, and especially by a simple and direct method of automatically transferring ownership upon death without probate proceedings. The attractiveness of the last feature is demonstrated by the common use of joint savings bank accounts, with which the small Treasury bonds would be competing.

The Treasury regulations give these characteristics to bonds held in co-ownership in two separate ways. First, they specify who can obtain payment from the Treasury. Second, they provide that the survivor

will be recognized as the sole and absolute owner, any contrary judicial determination notwithstanding. The history and wording of the regulations, the consistent Treasury interpretation, and the effect given to them by the great majority of state courts leave no doubt that the regulations displace any state laws which either deny the survivor's right to enjoy the benefits of survivorship or impair the convenience, certainty, and simplicity which make the bonds attractive to small investors.

A. HISTORY AND WORDING OF THE REGULATIONS

The relevant portions of the first regulations issued by the Secretary of the Treasury in 1935 provided only that payment of co-ownership bonds would be made to the surviving co-owner or his estate "as though the survivor had been the sole owner" (App., *infra*, p. 37). Since another provision of the regulations stated that payment would also be made in accordance with a judgment or decree of a court of competent jurisdiction, the first provision could easily be read as providing only for a method of routine payment without creating a federal right to enjoy the benefits of survivorship. The ambiguity was plainly cured in the second revision of the regulations, issued in 1938. The Treasury limited the provision for recognition of judicial decrees by adding a stipulation that no judgment would be recognized which "would defeat or impair the rights of survivorship conferred by these regulations upon co-owners and beneficiaries." 31 C.F.R. (1938 Supp.) § 315.15(a), 3 F.R. 3128. The amendment was significant both because of its

explicit reference to rights of survivorship *conferred* by the regulations and because of its plain purpose to deny effect to any state law which impaired the benefit of the survivorship contract with the United States. The amendment explicitly denied the power of a State to affect this federal right even if the impairment was in the form of a state judgment such as would otherwise be recognized by the Treasury Department.

The Treasury also gradually clarified its twofold purpose in relation to the provision of the co-ownership regulations which had initially (in 1935) provided that upon the death of a co-owner the bond would be paid only to the surviving co-owner. The Fourth Revision of the Regulations in April 1941 amended this provision to emphasize that "the surviving coowner will be recognized by the Treasury Department as the sole and absolute owner of the bond." 31 C.F.R. (1941 Supp.) § 315.11(a)(2), 6 F.R. 2191. Even this amendment, which was unnecessary as a clarification of the Treasury's already explicit policies on *method of payment,* was apparently not considered sufficient indication that the regulations created federal contract rights regardless of state laws to the contrary. In the next revision the words "recognized by the Treasury Department" were amended to provide simply that "the surviving coowner will be recognized as the sole and absolute owner of the bond." 31 C.F.R. (1943 Supp.) § 315.32(b), 8 F.R. 8744.

B. ADMINISTRATIVE CONSTRUCTION OF THE REGULATIONS

Not only does the history of the applicable regulations reveal a long continued provision and careful

efforts to make it plain that "the rights of survivorship conferred by these regulations upon a surviving co-owner" include a federal right of sole and absolute ownership in the survivor but the Treasury Department has itself repeatedly interpreted its regulations as preserving for the survivor not merely the formal right to be paid by the Treasury but also the more substantial right to enjoy the benefits of survivorship which may have induced the purchase of the savings bond.

(*1*) In the late 1930's and early 1940's the Treasury Department wrote numerous letters explaining the intent of the regulations to interested persons. For example, in 1941, the Treasury advised the Attorney General of Missouri that "it is the Department's position that bonds registered in [co-ownership] form constitute a contract between the persons in whose names the bonds are registered and the Department, and that upon the death of one of the coowners, the survivor is vested with absolute ownership, regardless of state laws pertaining to joint tenancy or intestate succession" (*infra*, p. 43).

(*2*) When apprised of the pendency of litigation concerning the effect of the Treasury Regulations, the government has regularly participated as *amicus curiae*, presenting the Treasury's views.[8] An early

[8] See, *e.g.*, *In re Di Santo's Estate*, 142 Ohio St. 223, 51 N.E. 2d 639; *Franklin Washington Trust Co.* v. *Beltram*, 133 N.J. Eq. 11, 29 A. 2d 854. In 1948, the General Counsel of the Treasury Department in an address before the Real Property, Probate and Trust Law Section of the American Bar Association called attention to the fact that the Treasury Department was interested in presenting its views in litigations in

example is the brief filed as *amicus curiae* in support of an application for rehearing in *Decker* v. *Fowler*, 199 Wash. 549, 92 P. 2d 254 (1939). The Supreme Court of Washington had ruled that the purchaser of a survivorship bond had failed to satisfy the state requirements of delivery for an *inter vivos* gift. The court directed the survivor to collect the money due on the bonds and turn it over to the administrator of the deceased owner. The bonds were registered in the "beneficiary" form with survivorship rights conferred by regulations identical to those affecting co-ownership bonds. In its brief the government stated unequivocally the interpretation of the Treasury Regulations for which we now contend (pp. 34–36):

> * * * Mrs. Decker has complete ownership of the savings bonds by virtue of the Federal laws and regulations. As pointed out above, the regulations of the Treasury Department provide that upon the death of the registered owner of a savings bond on which a beneficiary is designated payment of the bond will be made to the beneficiary, or, if he so desires, the bond will be reissued in his name—a circumstance which as already indicated necessarily implies complete ownership. If these regulations merely determine the person to whom payment of the bond will be made and do not determine ownership of the bond, and if the surviving beneficiary has to cash the bond and turn the proceeds over to the repre-

which an attempt was being made to defeat the rights of a surviving co-owner or beneficiary. Lynch, *Savings Bonds in Estate Planning*, 87 Trusts & Estates 291 (1948).

sentative of the deceased registered owner's estate, these regulations become mere words and nothing more. The underlying purposes which influence the purchaser of the bond to designate a beneficiary disappear if the beneficiary receives no benefit therefrom. Under such circumstances there would be no reason for the purchaser to designate a beneficiary. It cannot be presumed that the Secretary of the Treasury in issuing these regulations would provide for a useless form of registration and thereby mislead thousands of innocent purchasers who, relying upon the regulations, believed that upon their death the bonds purchased by them would become the property of the persons designated by them as beneficiaries. * * *

(*3*) Since the decision of the Secretary to provide for an absolute right of survivorship—which would not depend upon or be impaired by varying state property rules—was motivated by a desire to make the bonds a more attractive form of investment, the Treasury has publicized its view of survivorship rights in printed circulars which receive wide public distribution. In literally millions of pamphlets distributed in the late 1930's the Secretary advertised throughout the country that "the flexibility and convenience of the co-ownership registration meets varied requirements of the owners of United States savings bonds and may be of particular value in the event of death or incapacity of either owner, as no court procedure is necessary for redemption of savings bonds by a surviving coowner."

Again, because of the great number of inquiries made of the Treasury Department in the early 1940's, the Department drafted a formal memorandum entitled "Statement of Treasury Department on Rights of Surviving Coowners and Beneficiaries of Savings Bonds", dated July 5, 1945 (App., *infra*, pp. 44–51). The *Statement*, and its subsequent revisions* which are primarily designed to bring the table of cases up to date, declare unequivocally that "surviving beneficiaries and coowners of savings bonds are the sole and absolute owners of such securities and that decedents' estates in such cases have no right, title or interest in the bonds", and that "State laws, as for example, the law of wills or of intestate succession * * * have no bearing whatsoever * * *" (App., *infra*, pp. 46, 48). The *Statement* is sent in response to any inquiries made of the Treasury Department and is available at Federal Reserve Banks.

The Treasury's long-standing and consistent interpretation of its own regulations precludes any suggestion that the co-ownership provisions are designed merely to facilitate payment of the bonds with the assurance that the government will not be sued for paying the wrong person. It cannot be said that this established administrative interpretation is "plainly erroneous or inconsistent with the regulation". Accordingly, the administrative interpretation that a real and absolute federal contract right of survivorship was intended to be created, notwithstanding conflicting state property law, is in itself dispositive as to the meaning of the regulations. *Bowles* v. *Seminole Rock*

*The fifth and current revision, dated October 1, 1958, is reprinted *infra*, pp. 51–61.

Co., 325 U.S. 410, 413–414; *Wright* v. *Paine*, 289 F. 2d 766, 768 (C.A. D.C.); *Daly* v. *United States*, 286 F. 2d 146, 149 (C.A. 7).

C. THE EFFECT GIVEN THE TREASURY REGULATIONS BY THE MAJORITY OF STATE COURTS

Recognizing that the attractiveness of co-ownership savings bonds to small investors depends upon the effectiveness of the Treasury's assurance that survivorship benefits are created by compliance with the federal regulations, the great majority of state courts have held that the right of a purchaser of a co-ownership bond to contract for the creation of survivorship interests is a matter of federal law overriding conflicting state laws. State requirements for a testamentary or *inter vivos* gift, state rules of descent and distribution, and state modification or abolition of joint tenancies have all been disregarded when recognizing them would impair or defeat the Treasury's promise of survivorship benefits. See Brief of Petitioner at pp. 22–25.

Only in the case of fraud, deceit, duress, mistake, or other seriously unfair circumstances such that the purchaser of the savings bond is not equitably entitled to dispose of the survivorship rights created by the federal contract have the majority of state courts recognized an exception to the survivor's right to enjoy the benefits of a co-ownership bond. For example, a wife who withdrew all of her husband's earnings from a joint bank account and invested them in co-ownership bonds of which her husband was not a co-owner did not create survivorship interests valid against

the husband who was equitably entitled to dispose of one half of the bank account. *Henderson's Admr.* v. *Bewley*, 264 S.W. 2d 680. Again, where the executor of a deceased co-owner had the bonds reissued without the survivor's knowledge in a co-ownership form with himself as co-owner the court properly ordered reissue in the name of the survivor alone. *In re Haas' Estate*, 10 N.J. Super. 581, 77 A. 2d 523. And where a husband attempted to defraud his wife of her rights under joint and mutual wills by converting his assets into co-ownership bonds, the court declared a resulting trust in the proceeds in favor of the wife. *Anderson* v. *Benson*, 117 F. Supp. 765 (D.C. Neb.). See also *Kats* v. *Driscoll*, 86 Cal. App. 2d 313, 194 P. 2d 822.

But even this line of exceptions is defined by federal law, and a state court's power to impair the benefits of a co-ownership bond because of such factors as fraud, duress, or mistake is confined within the limits cognizable consistently with the Treasury Regulations. A state court could not, for example, give effect to its statute of wills in conflict with the Treasury provisions for creation of survivorship benefits by merely asserting that failure of compliance with the state rule constitutes a fraud on the estate of the deceased co-owner. Compare *Lee* v. *Anderson*, 70 Ariz. 208, 218 P. 2d 732, with *Kats* v. *Driscoll*, 86 Cal. App. 2d 313, 194 P. 2d 822. As in many other cases, state property law or state law imposing fiduciary obligations provides the context for a determination of federal consequences, but whether survivorship bene-

fits are being improperly impaired remains a federal question.

The distinction drawn by the holdings of these cases is suggested by the following statement from the *Anderson* case, *supra* (117 F. Supp. at 780):

> If counsel's construction of the regulations were accepted without qualification United States Savings Bonds would become the impenetrable sanctuary of ill-gotten gains and an excellent instrumentality for the perpetration of deliberate fraud. That Congress did not intend, in exercising its constitutional power to borrow money, to effect such a result is too clear to require discussion.

On the one hand, a state has no power to deny the owner of property or a person with authority to act on behalf of the owner the right to invest the property in co-ownership bonds and enjoy their benefits; nor can it impose procedural requirements inconsistent with the Treasury Regulations for the realization of these benefits. On the other hand, one obtains no special right to enjoy the benefits of an unauthorized use of another's property simply by investing it in co-ownership bonds. State laws protecting a person's right to the use, enjoyment, and control of his property form an implicit exception to the Treasury Regulations even if they impair the survivorship rights which the wrongdoer illegally attempted to create, for federal bonds are not to be made a sanctuary for a wrongdoer's gains. The rightful owner can pursue his property even after it has been converted into a co-ownership bond.

III

THE TEXAS SUPREME COURT HAS ERRONEOUSLY DEPRIVED THE SURVIVING CO-OWNER OF THE BENEFITS CONFERRED BY THE TREASURY

The Texas Supreme Court has held in this case that in Texas a husband and wife cannot authorize the creation of a survivorship interest in co-ownership savings bonds by simply entering into a contract with the United States in compliance with federal regulations and by paying over funds which they alone own. It is plain that the decision below was not—and in its procedural context could not be—predicated upon a finding of fraud or inequitable conduct. Nor does it involve an owner's right to pursue the proceeds of property of which he has been wrongfully deprived.

The proceedings before the Texas Supreme Court in substance involved cross motions for summary judgment. For the purpose of passing upon respondent's motion, which it granted, the Texas Supreme Court was required by state rules to treat all unresolved factual questions as if determined in favor of petitioner. Respondent did not allege any form of actual fraud upon the part of petitioner. Moreover, even respondent's traversed allegation that the bonds were purchased without the knowledge or consent of petitioner's wife had to be considered untrue for the purpose of summary judgment by the state court. Indeed, it is entirely clear that the court below considered it unnecessary to resolve any factual dispute about the wife's consent or knowledge or any legal question as to the bearing of an absence of consent

upon fraud or the petitioner's authority to invest the community funds. For the court's decision rests exclusively upon its earlier opinion in *Hilley* v. *Hilley*, 342 S.W. 2d 565, where it held that, regardless of a complete absence of fraud and despite defeat of the plain intent of the parties, a husband and wife can not use community property to create a joint tenancy in either government savings bonds or corporate stocks.'

The holding of the court below denying the right of the co-owners of community property to use it to create a survivorship interest in federal co-ownership bonds is in direct conflict with the Treasury Regulations and represents a sharp departure from the rule followed by the great majority of states that the rights of survivorship in United States savings bonds cannot be defeated or impaired by contrary state law except to recognize the claims of one who has been deprived of his right to the use and enjoyment of the property invested in co-ownership bonds. The manner in which Treasury bonds may be acquired with assent of the owners of the consideration exchanged, and also

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' The court reasoned that any attempt to purchase a survivorship interest with community property inevitably ran afoul of the statutory definitions of separate and community property (342 S.W. 2d at 569):

"* * * Under the terms of their contract if the same is effective, each [husband and wife] relinquished at least some of the legal incidents of community ownership and received in lieu thereof the right to become absolute owner in the event he or she survived the other contracting party. * * * There is no gift then but an attempted transfer of a survivorship right or interest from each spouse to the other for a valuable consideration. Since the consideration paid by each is derived from the community estate, the right or interest which each expected to acquire necessarily remains part of that estate."

the kinds of interest which may be created in Treasury bonds, are governed exclusively by the federal law and regulations. No distinction between common law and community property law could justify the court below in disregarding this established principle. In the words of the earlier Texas decision sustaining the effectiveness of the Treasury Regulations against a similar challenge under state law, "There is no sanctity of the community property law above that of other types of law." *Hicks* v. *Smith*, 159 Tex. 280, 318 S.W. 2d 422, 440.

Wissner v. *Wissner*, 338 U.S. 655, involved a strikingly similar situation. In that case a serviceman's widow claimed to be entitled to one-half the proceeds of National Service Life Insurance on the life of her husband. The serviceman had designated his mother as the beneficiary of the policy. Under California community property law pertaining to ordinary insurance policies the widow was entitled to one-half the proceeds because the insurance premiums had been paid with community property and she had not consented to the use of the property for that purpose. The California court, on the basis of state law, entered judgment in favor of the widow for one-half the amount of the policy. This Court reversed, because the fact that "Congress has spoken with force and clarity in directing that the proceeds belong to the named beneficiary" was dispositive. 338 U.S. at 658. The Court noted that "[w]hether directed at the very money received from the Government or an equivalent amount, the judgment below nullifies the

soldier's choice and frustrates the deliberate purpose of Congress." 338 U.S. 659.

Nor is it significant that the Texas court suggested that by following the state procedures for partition of community property into separate property, and then following the state procedures for creation of a joint tenancy out of separate property, a survivorship interest in federal bonds could be obtained. The Treasury regulations protect not only the substance of survivorship benefits but also the certainty and convenience of the simple Treasury procedures for obtaining them—procedures upon which many thousands of purchasers have relied. Texas has no greater power to condition the enjoyment of federally-created survivorship benefits upon compliance with the "partition" requirement of "a written instrument subscribed and acknowledged by both spouses in the manner now required by law for the conveyance of realty" (Vernon's Texas Civ. St. Ann., Art. 4624a) than has a common law state to condition federal survivorship benefits upon compliance with its statute of wills, or its requirement of delivery for making an *inter vivos* gift, or its requirement of a particular form of writing to create a joint tenancy. And each of the latter has been regularly held inapplicable to co-ownership savings bonds. See, *e.g.*, *Lee* v. *Anderson*, 70 Ariz. 208, 218 P. 2d 732.

As the case now stands, no Texas court has found, or heard evidence from which it could find that petitioner was acting in fraud of his wife's rights or even without her consent and authority in purchasing

and continuing to hold for more than thirteen years of her life the co-ownership bonds now in issue. The decision of the Texas Supreme Court granting summary judgment for the respondent must therefore be reversed.

* * * * *

While the decision of the Supreme Court of Texas granting summary judgment to respondent must be reversed, it would, in the government's view, be inappropriate for the Court at this time to rule upon petitioner's motion for summary judgment. There are a number of questions of fact and, possibly, of State law which should be resolved before passing upon any remaining federal questions.

1. The extent of petitioner's consensual authority to purchase the bonds has not been established. Although respondent alleges that petitioner acted without the knowledge or consent of his wife, the evidence may contradict the allegation. Consensual authority may be created not only by express and specific assent but also by a course of conduct implying willingness to have the agent undertake a particular transaction or class of transactions. The evidence may show that petitioner's wife had approved similar transactions in the past or otherwise gave him reason to believe that she was willing to have him purchase the bonds. She may have subsequently learned of the purchase and conducted herself in such a way as to ratify petitioner's action. If the evidence develops along any of these lines, petitioner's claim to the survivorship benefits would rest squarely upon the normal federal right of the

owners or one authorized by the owners to invest their property in Treasury co-ownership bonds.

2. Even if petitioner had no consensual authority to purchase Treasury bonds, he may establish his right to make the purchase in the exercise of a husband's normal managerial powers and duties with respect to community property. Although the Texas court held that the husband's authority does not extend to the use of community funds to create a joint tenancy with his wife without the wife's consent to a formal partition, the nature of this limitation has not been defined exactly enough to present in sharp focus additional questions which the Texas rule might raise concerning the relationship between the State and federal law. If the Texas law, fairly construed, were aimed solely at preventing a husband from abusing a fiduciary position by overreaching his wife under circumstances which might be denominated fraudulent under general legal principles,[9] the federal law might permit Texas to impose a constructive trust upon the bonds and their proceeds under the principles outlined above (p. 21, *supra*). Such a situation might arise if a husband were to invest community property heavily in co-ownership bonds at a time when he knew his life expectancy was many times greater than his wife's. Other, closer cases can readily be imagined. But one cannot rule out, at this stage, the possibility that the Texas rule, as applied to co-ownership bonds and other joint tenancies, is essentially a law pertaining to the

[9] *Strong* v. *Repide*, 213 U.S. 419; *Magruder* v. *Drury*, 235 U.S. 106; cf. *Murphy* v. *Cartwright*, 202 F. 2d 71 (C.A. 5); *Speed* v. *Transamerica Corp.*, 99 F. Supp. 808 (D.C. Del.).

devolution of property upon death, *i.e.*, that its function is to prevent husbands from acquiring rights of survivorship in the wife's share of community property. If so, the rule plainly conflicts with the federal law governing Treasury bonds and is invalid *pro tanto*. If the Texas limitation on the husband's authority cannot fairly be limited to cases of fraud or breach of trust akin to fraud but is nevertheless designed either to protect the wife's interest in the property while she is alive or to insure the husband's proper attention to the management thereof, then more difficult questions concerning the relationship of the State and federal law arise which ought not to be determined without full evidence upon the facts and more precise exposition of local community property law.

CONCLUSION

For the foregoing reasons, the judgment of the Supreme Court should be reversed.

Respectfully submitted.

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WILLIAM H. ORRICK, JR.,
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JANUARY 1962.

APPENDIX

Regulations Governing United States Savings Bonds

Treasury Department,
Office of the Secretary,
Washington, February 25, 1935.

1935
Department Circular No. 530

Public Debt Service

To Owners of United States Savings Bonds, and Others Concerned:

The following regulations governing United States Savings Bonds are published for the information and guidance of all concerned:

I. REGISTRATION

1. United States Savings Bonds will be issued only in registered form. Except as otherwise specifically provided in these regulations, the Treasury Department reserves the right to treat as conclusive the ownership and interest in the bond as stated in the registration.

2. The following forms of registration are authorized:

(*a*) In the name of any individual, including minors.

(*b*) In the names of two (*but not more than two*) natural persons in the alternative, as, for example, "John Jones OR Mary Jones." The addresses of both persons should be inscribed on

the savings bonds. No other form of registration in two names is authorized except, as provided in subparagraphs (*c*) and (*d*) hereof.

(*c*) In the name of one individual and a single designated beneficiary in case of death, as for example, "John Smith, payable on death to Mary Smith", in which case the address of the registered owner and the address of the beneficiary should be inscribed on the face of the savings bond.

(*d*) In the name of one or more guardians, executors, administrators, trustees, or other fiduciaries, whose names shall be given, followed by a description as complete as possible of the capacity in which and the persons for whom they hold the savings bonds. Registration in a form indicating that the persons whose names appear on the bonds do not hold full legal title to the savings bonds, as, for example, "John Jones, under Article 10, of the will of Henry Smith", will not be permitted.

(*e*) In the name of any corporation, unincorporated association, partnership, or joint-stock company. The name of the owner should be followed by the word or words "corporation", "unincorporated association", "partnership", or "joint-stock company", as the case may be. No designation may be made in the registration of an officer or agent to receive payment in behalf of the corporation, unincorporated association, partnership, or joint-stock company.

II. BONDS NOT TRANSFERABLE

United States Savings Bonds are not transferable; and are payable only to the owner named thereon, ex-

cept in case of the death or disability of the owner or as a result of judicial proceedings, and then only to the extent specifically provided in Sections XIII, VIII, and XIV hereof.

III. LIMITATION ON HOLDINGS

Under the provisions of Section 22 of the Second Liberty Bond Act, approved September 24, 1917, as amended, it shall not be lawful for any one person at any one time to hold savings bonds issued during any one calendar year in an aggregate amount exceeding $10,000 (maturity value). In determining whether the $10,000 limitation on the holdings of any one person has been exceeded, the full maturity value of savings bonds issued in any one calendar year held for the benefit of such person in the name of a fiduciary or fiduciaries, or held by such person with any other person (but not of bonds of which such person is merely the designated beneficiary in case of the death of the owner), shall be added to the full maturity value of such bonds held by such person in his or her own name, and the sum must not exceed $10,000 (maturity value). If any person who owns savings bonds should become the owner of additional savings bonds as the result of the death of any other person, and the total amount then owned by him is in excess of the lawful limit, he should immediately surrender the excess for payment at the redemption value for the period in which the excess was acquired.

IV. LOST, STOLEN, OR DESTROYED BONDS

1. Under the provisions of the Revised Statutes, duplicates may be issued or payment made upon proof of the loss, theft, or destruction of savings bonds. Application for relief in such cases will be governed

by the regulations found in Department Circular No. 300. Full information as to the requirements, as well as appropriate forms, may be secured from the Treasury Department, Division of Loans and Currency, Washington, D.C.

2. It is important that immediate notice of such loss, theft, or destruction be given to the Treasury Department.

V. SAFEKEEPING FACILITIES

1. Any savings bond will be held in safekeeping by the Secretary of the Treasury if the purchaser so desires, and in this connection the Secretary will utilize the facilities of the Federal Reserve banks as fiscal agents of the United States. The purchaser may arrange for such safekeeping at the time he purchases his bond or subsequently. If the owner desires his bond held in safekeeping, he can obtain from the postmaster an appropriate envelope, and an application blank which he should fill out, address to the appropriate Federal Reserve bank, sign and enclose with the bond in the envelope, which should be addressed to the appropriate Federal Reserve bank. The postmaster will then register the envelope, at the owner's expense, and the registry receipt will serve as the owner's temporary receipt.

2. When received at the Federal Reserve bank, the bond will be placed in safekeeping and a receipt from the bank will be mailed to the owner at the address given in the application. The owner can subsequently regain possession of his bonds upon application to the Federal Reserve bank, and upon such identification as is required by such bank.

3. Postmasters generally will assist owners in arranging for safekeeping, but will not act as a safekeeping agent.

VI. GENERAL PAYMENT PROVISIONS

1. Savings bonds will be payable at or after maturity at their full value, or, at the option of the owner, prior to maturity (but not within 60 days after the issue date) at the appropriate redemption value as shown on the face of each bond. Payment, in each case, will be made following presentation and surrender of the bond, at the Treasury Department, Division of Loans and Currency, Washington, D.C., or at any Federal Reserve bank, with the request for payment appearing on the back thereof properly executed in accordance with the succeeding paragraphs. Such presentation will be at the expense and risk of the owner and, for his protection, the bond, or bonds, should be presented in person or forwarded by registered mail.

2. The request for payment must be signed in ink or indelible pencil by the person in whose name the bond is inscribed, or by the person entitled to receive payment under the provisions hereof. The request must be signed in the presence of, and be certified by, one of the following officers:

(*a*) Any United States postmaster, acting postmaster, or official in charge of a post office authorized to sell savings bonds: provided that in post offices of the first class the assistant postmaster, the postal cashier, the superintendent of money orders, or the superintendent or clerk in charge of a classified station or branch may certify to the request for payment; and provided further that at any post office of the second class, the assistant postmaster, or the clerk in charge if there is no assistant postmaster, may certify to the request for payment. If an official other than a postmaster, acting postmaster, or an official in charge of an office certifies to a request for payment, he should certify in the name of the post-

master, acting postmaster, or official in charge, followed by his own signature and official title, e.g., "John Doe, postmaster, by Richard Roe, Superintendent of Money Orders". The certification of any post-office official must be authenticated by a legible imprint of the dating stamp of his post office;

(*b*) Any executive officer of an incorporated bank or trust company, whose signature must be authenticated by the impression of the corporate seal of the bank or trust company;

(*c*) Any officer authorized generally to witness assignments of United States registered bonds (See Pars. 33–35 Department Circular 300).

3. No person authorized to certify requests for payment may certify a request signed by himself, either in his own right or in any representative capacity.

4. Certifying officers should require positive identification of the person executing the request for payment as the person whose name appears on the face of the bond, or the person entitled to request payment under the provisions of these regulations, and will be held fully responsible therefor.

VII. MINORS

1. If a savings bond is registered in the name of a minor and the Treasury Department has notice that a guardian of the estate of such minor has been appointed by a court of competent jurisdiction, payment will be made only to such guardian. The request for payment appearing on the back of the bond should be signed: "A. B., minor, by C. D., guardian" and must be supported by a certificate from the proper court, or by a certified copy of the order appointing the guardian, showing his appointment and qualification. The certificate, or certified copy, must be under

the seal of the court and should be dated not more than one year prior to the presentation of the bond.

2. If the Treasury Department has no notice of the appointment of a guardian of the estate of a minor owner of a savings bond, payment will be made direct to such minor owner, provided such minor is, at the time payment is requested, of sufficient competency and understanding to sign his name to the request and to comprehend the nature thereof. In general, the fact that the request for payment has been signed by the minor and duly certified in accordance with Section VI hereof will be accepted as sufficient proof of such competency and understanding. If the Treasury is properly advised in the request for payment that such minor owner is not of sufficient competency and understanding to execute the request for payment, payment will be made to either parent of the minor with whom he resides, or in the event that such minor resides with neither parent, then to the person with whom he does reside. In executing the request for payment the parent or other person shall sign the minor's name as well as his own name, and state his relationship to the minor, and there shall be inserted above the space for signature in the request for payment a statement to the effect that the owner is a minor, that he is not of sufficient competency and understanding to execute the request for payment, and that the person signing the request is the person with whom the minor resides. An appropriate form is as follows:

"I am the _____ (*state relationship*) of A. B. and the person with whom he resides. He is not of sufficient competency and understanding to sign this request.

C. D._____
on behalf of A. B."

VIII. DISABILITY OF OWNERS

1. If the owner of a savings bond has been legally declared to be incompetent to manage his affairs and the Treasury Department has notice that a conservator or other legally constituted representative of his estate has been appointed by a court of competent jurisdiction, payment will be made only to such conservator or other legal representative. The request for payment should be signed: "A. B. incompetent, by C. D., conservator" (guardian or committee as the case may be), and must be supported by a certificate from the proper court or a certified copy of the order of the court appointing such conservator or other legal representative showing his appointment and qualification. The certificate, or certified copy, should be under the seal of the court and dated not more than one year prior to the date of the presentation of the savings bond for payment.

2. In cases where the owner of a savings bond has been judicially declared incompetent or insane and no guardian or other legal representative of his estate has been appointed, and the entire gross value of his personal estate, both real and personal, does not exceed $500, payment will be made to a member of his family standing in the position of voluntary guardian upon presentation of proof satisfactory to the Secretary of the Treasury that the proceeds of the bonds are required, and are to be used, for the purchase of necessaries for the incompetent or for his wife or minor children or other persons dependent upon him for support.

IX. COOWNERS

A savings bond registered in the names of two persons in the alternative, as for example, "John Jones OR Mary Jones", will be payable to either person

named thereon without requiring the signature of the other person, but not to the representative of a deceased coowner except as hereinafter provided, and upon payment to either person the other shall cease to have any interest in the bond. Should one of the owners die and then the survivor himself die before payment of the savings bond, the provisions of Section XIII hereof, governing payment or reissue of savings bonds held by a deceased owner, shall govern the payment or reissue of the bond as though the survivor had been the sole owner.

X. BENEFICIARIES

1. A savings bond registered in the form "A. B. payable on death to C. D." will be payable, until the Treasury Department has received notice of the death of the registered owner, as if the beneficiary were not named on the bond. Upon proof of death of the registered owner, the bond will be payable to, or reissued in the name of, the beneficiary named on the bond, at his option (but only if such beneficiary did not predecease the original owner), as if he had been the registered owner.

2. If the beneficiary should predecease the registered owner, the savings bond will be payable to the registered owner as though such beneficial registration had not been made. Registration naming beneficiaries at the death of the registered owner cannot be changed so as to add, eliminate, or substitute beneficiaries.

3. Should the beneficiary die after the death of the registered owner, but before payment or reissue of the savings bond, the provisions of Section XIII hereof governing payment or reissue of savings bonds held by a deceased owner, shall govern the payment or reissue of the savings bond as though the beneficiary had been the registered owner.

XI. FIDUCIARIES

1. A savings bond registered in the name of a fiduciary will be paid to such fiduciary without proof of his authority upon presentation of the bond with the request for payment duly signed by him and certified in accordance with Section VI hereof. The request for payment should be signed by the fiduciary in exactly the same manner as his name and designation as fiduciary appear on the face of the savings bond.

2. In the event of the death or disqualification of a fiduciary in whose name a savings bond is registered, such savings bond will be paid to, or, if desired, reissued in the name of, his successor upon satisfactory proof of the appointment and qualification of such successor. If there is no successor, the savings bond may be paid to, or, if desired, reissued in the name of the person or persons beneficially entitled thereto upon satisfactory proof of their beneficial ownership.

XII. CORPORATIONS, ASSOCIATIONS, PARTNERSHIPS, ETC.

1. A savings bond registered in the name of a corporation, unincorporated association, or joint-stock company will be paid upon a request for payment signed by a duly authorized officer of such organization. The signature to the request should be in the form, "The ---------- Company, by JOHN JONES, President". The fact that the request for payment is signed and duly certified in accordance with Section V hereof may be accepted as sufficient proof of the officer's authority.

2. A savings bond registered in the name of a partnership will be paid upon a request for payment signed by any general partner. The signature to the request should be in the form "Smith and Jones, a partnership, by JOHN JONES, a general partner". The fact that the request for payment is signed and

duly certified in accordance with Section VI hereof may be accepted as sufficient proof that the person signing the request is a general partner.

XIII. DECEASED OWNERS

1. *With administration.*—If the owner of a savings bond dies leaving a will which is duly admitted to probate and on which letters testamentary are issued, or dies intestate and the estate is administered in a court of competent jurisdiction, payment will be made to the duly appointed representative of the estate. The request for payment should be signed in the form, "A. B., executor (administrator) of the estate of C. D., deceased", and must be supported by a certificate under the seal of the court appointing such representative, dated not more than six months prior to the presentation of the savings bond for payment, showing the appointment and qualification of such representative and stating that the appointment is still in force; or, in the absence of such a certificate, by a duly certified copy of the representative's letter of appointment, the certification of which must be dated not more than six months prior to the presentation of the bond for payment, and must state that the appointment is still in force. A savings bond will be reissued in the name of an heir or legatee of the deceased owner upon the request of the representative accompanied by his certificate to the effect that the person in whose name reissue is requested is entitled to the savings bond as such legatee or heir. If the representative is himself the heir or legatee entitled to the savings bond and desires reissue in his own name, a special order of the court authorizing such reissue must be submitted.

2. *Without administration.*—If the owner of a savings bond dies and no legal representative of his

estate is to be appointed and it is established to the satisfaction of the Secretary of the Treasury, either that the gross value of the personal estate does not exceed $500, or that administration of the estate is not required in the State of the decedent's domicile, the savings bond will be paid to, or reissued in the name of, one (but not more than one) of the persons entitled to the bonds under the laws of the State of the decedent's domicile without administration. The request for payment should be signed in the form, "A. B., C. D., E. F., heirs and persons entitled to the estate of X. X., deceased," and should be accompanied by an agreement signed by all persons entitled, specifying the person to whom payment is to be made or in whose name the bond is to be reissued. Proof will be required that the debts of the decedent and of his estate have been paid or provided for, and that the person to whom payment is requested or in whose name reissue is requested, is entitled to the bonds; such proof will include affidavits of all persons entitled to any share in the estate setting forth the facts in detail and agreeing to the payment or reissue in question, supported by affidavits of two disinterested persons having personal knowledge of the decedent and his family and by a death certificate or other proof of the death of the owner. (Use Form L. & C. 285, copies of which may be procured from the Treasury Department or any Federal Reserve bank.) If the gross value of the personal estate exceeds $500 the Secretary of the Treasury may further require an affidavit or a certificate from a practicing attorney or judicial officer of the State of the decedent's domicile showing that administration of the estate is not required in such State and referring specifically to the statutes or the decisions of the courts of such State under which exemption from adminis-

tration is claimed, or showing that it is a general and well recognized practice in that State to settle such estates without administration.

3. No payment or reissue without administration will be permitted in a case where any of the persons entitled are minors or under disability, except to them or in their names or upon compliance with the provisions of Sections VII and VIII hereof governing the payment of savings bonds in the names of such persons.

XIV. CREDITORS' RIGHTS

Payment of a savings bond will be made in accordance with a judgment or decree of a court of competent jurisdiction, or proceedings pursuant to such judgment or decree, except in cases where the action is instituted for the purpose of giving effect to an attempted transfer by the owner contrary to Section II hereof. In appropriate cases the Treasury Department will require proof that the court acting had jurisdiction over the parties and subject matter, and proceeded in due course of its jurisdiction, and that the judgment or decree is final and conclusive, that it has fully and effectually transferred the title of the owner, and that it is not open to attack in any jurisdiction whatever. For this purpose duly authenticated copies of the complaint, order of service, return of service, answer, or other pleading, and the final judgment or order of the court must be furnished, together with a certificate, under seal, from the clerk of the court showing that the time for appeal has elapsed without an appeal having been taken, or that an appeal has been taken and determined by the court of last resort (in which case certified copy of the rescript or mandate of such court must be furnished) and that no further appeal is possible.

XV. DENOMINATIONAL EXCHANGE OR REISSUE

No denominational exchanges of savings bonds will be permitted, and except as expressly provided by this circular no reissue of savings bonds will be made, whether in the same name or in another name.

XVI. FURTHER PROVISIONS

These regulations are prescribed by the Secretary of the Treasury as governing United States Savings Bonds issued under the authority of the Second Liberty Bond Act, approved September 24, 1917, as amended, and the provisions of Treasury Department Circular No. 300 have no application to such savings bonds except as hereinbefore specifically provided.

The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing United States Savings Bonds.

HENRY MORGENTHAU, JR.,
Secretary of the Treasury.

JUNE 9, 1941.

ROY MCKITTRICK, Esq.,
Attorney General
Jefferson City, Missouri

Dear Sir:

My attention has been called to your letter of May 12, 1941, addressed to the Secretary of the Treasury, with respect to United States Savings Bonds registered in the name of "Dr. B. Rush Mason or Mary Belle Mason" as coowners.

The rights of registered owners or coowners named in United States Savings Bonds are governed by the regulations issued from time to time by the Depart-

ment. These regulations have the force and effect of law since they have been promulgated pursuant to the authority contained in Section 22 of the Second Liberty Bond Act of September 24, 1917, as added by the Act of February 4, 1935, 49 Stat. 21 (U.S.C. title 31, sec. 757c). The latter act has recently been amended by the Public Debt Act of 1941 (Public No. 7, 77th Congress). The regulations now in force are contained in Department Circular No. 530, Fourth Revision, a copy of which is enclosed. It is there provided that upon the death of a coowner without having surrendered the bond for payment, the surviving coowner "will be recognized by the Treasury Department as the sole and absolute owner of the bond". Section 315.11(a)(2). It is the Department's position that bonds registered in this form constitute a contract between the persons in whose names the bonds are registered and the Department, and that upon the death of one of the coowners, the survivor is vested with absolute ownership, regardless of state laws pertaining to joint tenancy or intestate succession. Registration in the form you suggest would therefore be unnecessary for the purpose of securing the rights of the survivor. Moreover, only one form of registration, establishing coownership is authorized by the regulations. (See Sec. 315.2(c)(1)(ii))

For a case upholding the rights of survivorship conferred upon coowners of United States Savings Bonds, your attention is invited to *In re Stanley's Estate,* (Colo. 1933) So. P. (2d) 332. In that case it was claimed that certain United States Savings Bonds which had been purchased by the testatrix, Mrs. Stanley, should constitute a part of her estate and be distributed accordingly. The Supreme Court of Colorado, however, overruled that contention and

awarded the bonds to the surviving coowner in accordance with their tenor and the regulations of the Department.

Very truly yours,

/s/ JOSEPH J. O'CONNELL, Jr.,
Acting Assistant General Counsel.

Enclosures
JM:mw 6/4/41

STATEMENT OF TREASURY DEPARTMENT

On Rights of Surviving Coowners and Beneficiaries of Savings Bonds[1]

The Treasury regulations provide that surviving coowners and beneficiaries are entitled to sole and absolute ownership of savings bonds and that judicial proceedings which would defeat or impair those rights will not be recognized. These regulations, promulgated in 1935 pursuant to Section 22(a) of the Second Liberty Bond Act, have been in effect, with minor changes, ever since. Insofar as the rights of coowners and beneficiaries are concerned, they were based on very similar regulations governing the issuance of War Savings Certificates during the first world war, which had been tested in the courts and uniformly upheld.[2] Those certificates were issued under the authority of 31 U.S.C., Section 757, 40 Stat. 291, which provides in part "Such war savings certificates shall be in such form or forms and subject to such terms

[1] The term "savings bonds" as used herein signifies all United States Savings Bonds, of whatever series, including those referred to as Defense Savings Bonds and as War Savings Bonds.

[2] *Warren* v. *United States* (1929), 68 Ct. Cls. 634 (cert. denied 50 Sup. Ct. 346, 281 U.S. 739); *United States* v. *Janowitz* (1921), 257 U.S. 42, and *United States* v. *Sacks* (1921), 257 U.S. 37.

and conditions, and may have such provisions for payment thereof before maturity, as the Secretary of the Treasury may prescribe."[3]

The Department's position on the savings bond question is that the rights of surviving coowners and beneficiaries to sole and absolute ownership, established by the regulations, which are incorporated by reference in the text of the bonds, are exclusively matters of Federal law and contract (*Ruddy* v. *Rossi* (1918), 248 U.S. 104), arising in the exercise of the borrowing power granted to the Government by the Constitution (*McCulloch* v. *Maryland* (1819), 4 Wheat. 316, 411–15, 421).

Under the Constitution the Government has the power to borrow money on the credit of the United States (Art. I, Sec. 8, Cl. 2) and to make all laws which shall be necessary and proper for carrying that power into effect (Ibid. Cl. 18). Section 22(a) of the Second Liberty Bond Act, pursuant to which savings bonds are issued, provides in part that savings bonds shall be issued "in such manner and subject to such terms and conditions * * * including any restrictions on their transfer, as the Secretary of the Treasury may from time to time prescribe."[4] No contention has ever been made that the regulations promulgated by the Secretary under that section are in excess of the authority therein conferred on him, and, in view of the broad statutory terms used, no such argument could be sustained.

Therefore the regulations governing savings bonds are a valid exercise of the Federal borrowing power, have the force and effect of Federal law *United States*

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[3] Compare with the savings bond statute quoted in part in the third paragraph hereof.

[4] Section 22(a) was amended by the Public Debt Act of 1941 (55 Stat. 7, U.S.C. 1946 Ed., title 31, sec. 757c).

v. *Birdsall* (1914) 233 U.S. 223; *United States* v. *Jannowitz* (1921), 257 U.S. 42), and by virtue of Article VI, Cl. 2, of the Constitution are "the supreme law of the land" by which the "judges in every State shall be bound * * *, anything in the Constitution or laws of any State to the contrary notwithstanding." It follows that State laws, as for example, the law of wills or of intestate succession, or laws governing given forms of tenancy or the common law related to delivery in the case of gifts, have no bearing whatsoever on the problem and that judicial decisions based thereon are in derogation of the supreme law of the land.

Almost without exception, courts throughout the country have been sustaining as matters of Federal law and contract the rights of surviving beneficiaries and coowners established by the savings bond regulations. Decisions in the following States have held that estates of deceased owners or coowners have no right, title or interest in the bonds when there is a surviving beneficiary or coowner: Arkansas, California, Colorado, Florida, Illinois, Iowa, Louisiana, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Texas, and Wisconsin.* The decisions were handed down by the highest State court in the following States: Arkansas, Colorado, Florida, Iowa, Maine, Nevada, North Carolina, Ohio, and Texas.

The cases of *Decker* v. *Fowler* (Wash., 1939), 92 P. (2d) 254, and *Deyo* v. *Adams* (N.Y., 1942), 36 N.Y.S. (2d) 734, which refused to uphold the rights of surviving beneficiaries, have been severely criticized by a

* The appendix to this statement contains a complete table of cases.

number of courts[6] and by other noted authorities, and have been repudiated by the legislatures of their respective States in statutes adopting the language of the Federal regulations and confirming the rights of surviving coowners and beneficiaries.[7] The erroneous reasoning of the Decker case is sharply pointed out in 131 A.L.R. 967, in 14 Wash. Law Rev. 312 (1939), suggesting that it is as unconstitutional as it is erroneous, and in 27 Minn. Law Rev. 401 (1943), characterizing it—and incidentally the Deyo opinion which followed it—as "poor law." In brief, both cases have been thoroughly discredited.

Moreover, *Deyo* v. *Adams* had little, if any, value as a precedent to begin with, for the opinion was handed down not on the merits, but on a motion to dismiss for insufficiency of complaint and, over objection that the interlocutory decision was the law of the case, the court nevertheless granted the Gov-

[6] *Deyo* v. *Adams* has been criticized even by courts in the same State. For example, see Mr. Surrogate Foley's opinion in *In re Deyo's Estate*, which is cited in the appendix to this statement.

[7] Wash. Rev. Stat. (Remington's Supp. 1943), Secs. 11548–60, 61, and 40 McKinney's Consol. Laws of New York, Ann. (Supp. 1943), Sec. 24. California and Illinois have enacted similar legislation. See Sec. 704, Civil Code, added by the laws of 1943, and Ch. 76, Sec. 2, as amended, Smith-Hurd Illinois Annotated Statutes, respectively. In view of its opinion that the rights of surviving coowners and beneficiaries of savings bonds rest firmly on the constitutional power of the Federal Government to borrow money on the credit of the United States and to enact all laws necessary to the effective exercise of that power, the Treasury Department has never requested or urged State legislation on the subject although undoubtedly statutes such as those which have been enacted in California, Illinois, New York, and Washington are helpful in preventing litigation in those States.

ernment's motion for leave to participate by way of a Suggestion of the Interest of the United States. The Government filed its Suggestion of the Interest of the United States in order to get a decision on the merits but, for reasons not within its control, there were numerous delays. On pages 382 and 383 of his opinion in *In re Deyo's Estate,* Mr. Surrogate Foley commented on this, stating that the facts set forth "clearly show that the responsibility for the unjustifiable delay in the disposition of the question of ownership of the bonds rests wholly with the executrix." Finally the action was discontinued by stipulation of the parties and the bonds were paid to the beneficiary, Mrs. Adams.

It is quite clear then that the opposing decisions carry no weight as judicial authorities and that the overwhelming majority of cases which have arisen in the courts have sustained the Government's position that surviving beneficiaries and coowners of savings bonds are the sole and absolute owners of such securities and that decedents' estates in such cases have no right, title or interest in the bonds.

[July 5, 1945]

APPENDIX

Below is a table of cases[1] in which the courts have held that decedents' estates have no right, title, or interest in savings bonds when there is a surviving beneficiary or coowner.[1] One asterisk before the name of a case signifies that the bonds involved therein were in coownership form. Two asterisks before the name of a case mean that some of the bonds involved were in the coownership form and

[1] See also *Warren* v. *United States*, cited in footnote 1, page 1 of the Statement. The *Warren* case involved Treasury War Savings Certificates inscribed "A, payable on death to B".

others in the beneficiary form of registration. The other cases deal entirely with rights of surviving beneficiaries.

It should be kept in mind that cases involving rights of surviving beneficiaries may be cited in support of the rights of surviving coowners of savings bonds, and vice versa, because the right of survivorship in each case is identical and the courts have uniformly based their decisions on considerations of contract. Unreported cases are cited in the table because most of them have been decided in probate courts and, since they deal with decedents' estates, their opinion that the bonds do not constitute part of the estate when there is a surviving beneficiary or coowner should receive great weight.

Table of Cases

Myers vs. *Hardin* (Ark. S. Ct. 1945) 186 S.W. (2d) 925

**Conrad* vs. *Conrad* (Calif. 1944) 152 P. (2d) 221

***Klenck* vs. *Crocker First National Bank* (No. 294,-300, Superior Ct., San Francisco Co., Calif., 1942)

**In re Stanley's Estate* (Colo. S. Ct. 1938) 80 P. (2d) 379

Matilda Mason vs. *H. G. Briley* (Fla. S. Ct. 1945) 21 So. (2d) 595

**In re Estate of August P. Ohlin* (No. 43–C–270, Circuit Ct., Cook Co., Ill., 1943)

In re Estate of Orson S. Killick (Circuit Ct., Cook Co., Ill., Jan. 12, 1944)

**In re Estate of Clara Courtney* (Probate No. 4916, Dist. Ct. for Fayette Co., Ia., 1944)

In re Estate of Emma C. Logan (No. 19,710, Dist. Ct. for Scott Co., Ia., 1944)

**In re Murray's Estate* (Iowa S. Ct. 1945) 20 N.W. (2d) 49

**Succession of Tanner* (La. Ct. of Appeals 1946) 24 So. (2d) 642[1]

Harvey vs. *Rackliffe* (Me. S. Ct. 1945) 41 A. (2d) 455

**Josephine Holden Murdock* vs. *Ina M. Spencer* (Norfolk Probate No. 112,529, Mass. June 1947)

Charlton vs. *Charlton* (No. 40,777, Circuit Ct. for Kent Co., Mich., 1938)

Alda Groce Cox vs. *Federal Reserve Bank of St. Louis and Monzel G. Evans, Admx.* (Civil No. 2519, Dist. Ct. of U.S., E.D., Mo., June 1944)

Kate Farrell vs. *H. J. Coleman* (Dist. Ct. for Yellowstone Co., 13th Dist., Mont., April 27, 1942)

**In re Estate of Anna Donohoe* (Probate No. 3323, Holt County, Nebr., 1947)

**Stephens* vs. *First National Bank of Nevada, August A. Glanzmann, Admr.* (Nevada S. Ct. 1948)

Franklin Washington Trust Co. vs. *Beltram* (N.J. 1943) 29 A. (2d) 854

Reynolds vs. *Danko* (N.J. 1944) 36 A. (2d) 420

**In re Estate of Andrew S. Levy* (Orphans Ct., Camden Co., N.J., March 10, 1944)

In re Deyo's Estate (N.Y. 1943) 42 N.Y.S. (2d) 379

**In re Willoughby's Will* (N.Y. 1943) 45 N.Y.S. (2d) 177

In re Hager's Estate (N.Y. 1943) 45 N.Y.S. (2d) 468

**Commercial National Bank, Exr.* vs. *Frederickson* (No. Car. S. Ct. June 6, 1945) 34 S.E. (2d) 402

Ervin vs. *Conn* (No. Car. S. Ct. June 6, 1945) 34 S.E. (2d) 402; 14 U.S. Law Week 2011

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[1] Cf. *Succession of Geagan (La. S. Ct. 1947) 33 So. (2d) 118.

Lauferweiler vs. *Richmond* (Ohio 1942) 22 Ohio Op. 265

In re Estate of Louis Di Santo (Ohio S. Ct. 1943) 51 N.E. (2d) 639

****Estate of Agnes Mellott Dockhorn*** (No. 1577-D Co. Ct. Garvin Co., Okla., 1945)

United States vs. *Dauphin Deposit Trust Co.* (M. D., Pa. 1943) 50 F. Supp. 73

Mitchell vs. *Edds* (Tex. S. Ct. 1945) 184 S.W. (2d) 823

In re Will of Celia Breslauer (No. 233-559, Milwaukee Co., Wis., Nov. 1, 1944)

STATEMENT OF THE TREASURY DEPARTMENT ON THE RIGHTS OF SURVIVING COOWNERS AND BENEFICIARIES OF SAVINGS BONDS[1]

The Treasury regulations provide that surviving coowners and beneficiaries are entitled to sole and absolute ownership of savings bonds and that judicial proceedings which would defeat or impair those rights will not be recognized. These regulations, promulgated in 1935 pursuant to Section 22(a) of the Second Liberty Bond Act, have been in effect, with minor changes, ever since. In so far as the rights of coowners and beneficiaries are concerned, they were based on very similar regulations governing the issuance of War Savings Certificates during the first world war, which had been tested in the courts and uniformly upheld.[2] Those certificates were issued

[1] The term "savings bonds" as used herein means all United States Savings Bonds of whatever series, including those referred to as Defense Savings Bonds and as War Savings Bonds.

[2] *Warren* v. *United States* (1929) 68 Ct. Cl. 634, cert. denied 281 U.S. 739, 50 S. Ct. 346; *United States* v. *Janowitz* (1921) 257 U.S. 42, and *United States* v. *Sacks* (1921) 257 U.S. 37.

under the authority of 31 U.S.C., Section 757, 40 Stat. 291, which provides, in part: "Such war savings certificates shall be in such form or forms and subject to such terms and conditions, and may have such provisions for payment thereof before maturity, as the Secretary of the Treasury may prescribe."[1]

The Department's position on the savings bond question is that the rights of surviving coowners and beneficiaries to sole and absolute ownership, established by the regulations, which are incorporated by reference in the text of the bonds, are exclusively matters of Federal law and contract (*Ruddy* v. *Rossi* (1918) 248 U.S. 104), arising in the exercise of the borrowing power granted to the Government by the Constitution (*McCulloch* v. *Maryland* (1819) 4 Wheat. 316, 411–15, 421).

Under the Constitution the Government has the power to borrow money on the credit of the United States (Art. I, Sec. 8, Cl. 2) and to make all laws which shall be necessary and proper for carrying that power into effect (*Ibid.* Cl. 18). Section 22(a) of the Second Liberty Bond Act (55 Stat. 7, U.S.C. 1952 Ed. Title 31, Sec. 757c), pursuant to which savings bonds are issued, provides in part that savings bonds shall be issued "in such manner and subject to such terms and conditions * * * including any restrictions on their transfer, as the Secretary of the Treasury may from time to time prescribe." No contention has ever been made that the regulations promulgated by the Secretary with respect to rights of surviving beneficiaries and coowners of savings bonds are in excess of the authority therein conferred on him, and, in view of the

[1] Compare with the savings bond statute quoted in part in the third paragraph hereof.

broad terms of the statute, no such argument could be sustained.

Therefore, the regulations governing savings bonds are a valid exercise of the Federal borrowing power, have the force and effect of Federal law (*United States* v. *Birdsall* (1914) 233 U.S. 223; *United States* v. *Janowitz* (1921) 257 U.S. 42), and by virtue of Article VI, Cl. 2, of the Constitution are "the supreme law of the land" by which the "judges in every state shall be bound * * *, anything in the Constitution or laws of any state to the contrary notwithstanding." It follows that state laws, as for example, the law of wills or of intestate succession, or laws governing given forms of tenancy, or the common law related to delivery in the case of gifts, have no bearing whatsoever on the problem and that judicial decisions based thereon are in derogation of the supreme law of the land.

Almost without exception, courts throughout the country have sustained as matters of Federal law and contract the rights of surviving beneficiaries and coowners established by the savings bond regulations. Decisions in the following states have held that estates of deceased owners or coowners have no right, title or interest in the bonds when there is a surviving beneficiary or coowner: Ala., Ariz., Ark., Calif., Colo., Fla., Ga., Ida., Ill., Ind., Iowa, Kans., La., Me., Mass., Mich., Miss., Mo., Mont., Neb., Nev., N.J., N.Y., N.C., N. Dak., Ohio, Okla., Pa., S.C., S. Dak., Tex., and Wisc.[4] The decisions were handed down by the highest State Court in the following states: Ala., Ariz., Ark., Colo., Fla., Ga., Iowa, Kans., Me., Mass., Miss., Mo., Nev., N.C., N. Dak., Ohio, Okla., Tex. and Wisc.

[4] The appendix to this statement contains a table of cases.

The cases of *Decker* v. *Fowler* (Wash. 1939) 92 P. 2d 254, and *Deyo* v. *Adams* (N.Y. 1942) 36 N.Y.S. 2d 734, in which the rights of the surviving beneficiaries were not upheld have been severely criticized by a number of courts [5] and by other noted authorities, and have been repudiated by the legislatures of their respective states in statutes adopting the language of the Federal regulations and confirming the rights of surviving coowners and beneficiaries.[6] The erroneous reasoning of *Decker* v. *Fowler* is sharply pointed out in 131 A.L.R. 967 in 14 Wash. Law Rev. 312 (1939), suggesting that it is as unconstitutional as it is erroneous, and in 27 Minn. Law Rev. 401 (1943), characterizing it—and incidentally *Deyo* v. *Adams* which had followed it—as "poor law". In brief, both cases have been thoroughly discredited.

It is quite clear then that the opposing decisions carry no weight as judicial authorities, and that the overwhelming majority of cases which have arisen in the courts have sustained the Government's position that surviving beneficiaries and coowners of savings bonds are the sole and absolute owners of such securities and that decedents' estates in such cases have no right, title to or interest in the bonds.

WASHINGTON, October 1, 1958, Fifth Revision.

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[5] *Deyo* v. *Adams* has been criticized by courts in the same state. For example, see Mr. Surrogate Foley's opinion in *In re Deyo's Estate*, which is cited in the appendix to this statement. Finally, the case was discontinued by stipulation of the parties and the bonds were paid to the surviving beneficiary.

[6] Wash. Rev. Stat. (Remington's Supp. 1943), Secs. 11548–60, 61, and 40 McKinney's Consol. Laws of New York, Ann. (Supp. 1943), Sec. 24. California, Illinois and Oregon have enacted similar legislation. See Sec. 704, Civil Code of Calif., added by the Laws of 1943; Ch. 76, Sec. 2, as amended, Smith-Hurd Ill. Annot. Stats.; and Sec. 114.270, Ore. Rev. Stats., respectively. Also see Title 51–104 Burns Ind. Stats. Anno.

NOTE: In view of its opinion that the rights of surviving coowners and beneficiaries of savings bonds rest firmly on the constitutional power of the Federal Government to borrow money on the credit of the United States and to enact all laws necessary to the effective exercise of that power, the Treasury Department has never requested or urged state legislation on the subject although undoubtedly statutes such as those which have been enacted in California, Illinois, New York, Oregon, and Washington are helpful in reducing litigation in those states.

APPENDIX

Below is a table of cases[1] in which the courts have held that decedents' estates have no right, title to or interest in savings bonds when there is a surviving beneficiary or coowner. One asterisk before the name of a case means that the bonds involved therein were in coownership form. Two asterisks before the name of a case mean that some of the bonds involved were in the coownership form and others in the beneficiary form of registration. The other cases deal entirely with rights of surviving beneficiaries.

It should be kept in mind that cases involving rights of surviving beneficiaries may be cited in support of the rights of surviving coowners of savings bonds, and vice versa, because the right of survivorship in each case is identical and the courts have uniformly based their decisions on considerations of contract. Unreported cases are cited in the table because most of them have been decided in probate courts and, since they deal with decedents' estates, their opinion that the bonds do not constitute part of the estate when there is a surviving beneficiary or coowner is entitled to receive considerable weight.

[1] See also *Warren* v. *U.S.* (p. 1, footnote 1) involving Treasury War Savings Certificates inscribed "A, payable on death to B".

Rulings (in some of the cases cited in the table) which may be of special interest are:

(1) *Creditors' Rights.—Reynolds* v. *Danko, In re Estate of Andrew S. Levy* (both N.J.) and *Matter of Laundree* (question of fraudulent conveyance under Article 10 of N.Y. Debtor and Creditor Law) held that savings bonds in the beneficiary and coownership forms were not within reach of creditors of the deceased owner, notwithstanding the insolvency of the estate.

(2) *Agreement Transmuted Separate Property into Community Property.*—A purchased bonds in B's name payable on death to C. Upon B's death, D, his widow, claimed an interest in the bonds on the basis of an agreement between her and B transmuting all of their separate property into community property. *In re Raffael's Estate* (Calif.) held that the Federal regulations were controlling and that B had no power unilaterally by the transmutation agreement with D to divest C of his right of survivorship in the bonds.

(3) *Property Settlement Agreements.*—Savings bonds purchased during the marriage of the parties (some of them in the husband's name, payable on death to the wife, others in their names in coownership) were held, in *Franklin* v. *Pope* (Ga.) to be the property of the former wife at the owner's death, notwithstanding a property settlement agreement entered into between the parties in connection with divorce proceedings. The court rightly observed that rights in savings bonds are matters of contract not dependent upon the marriage and that an agreement based essentially on the following stipulation merely extinguished former wife's claims which had arisen by virtue of the marriage: "This said settlement of alimony is hereby accepted by the wife as a full release

and quittance of any and all liability, present and future, insofar as any alimony or property adjustment between them is concerned and the said wife specifically waives and renounces any right of dower or years' support in the estate of the husband."

(4) *Murder and Suicide.*—In *Smith* v. *Greenburg* (Colo.) the court held that there was no provision in the savings bonds regulations under which a surviving coowner's rights could in any way be affected by his murder of the other coowner. Upon the survivor's suicide, title passed through his estate rather than the estate of the other coowner.

(5) *Attempt to Cut Off Right of Survivorship by a Will.*—In *Davis* v. *Beach* (Calif.) the court held that a will attempting to dispose of savings bonds to a person other than the designated beneficiary was invalid as against the surviving beneficiary since the latter's rights rest on considerations of Federal law and contract and there was no provision in the contract under which the owner could, at his option, change the beneficiary without the beneficiary's consent.

(6) *Common Disaster Statute Cannot Cut Off Right of Second Deceased Coowner and His Estate.*—*In re Gilger's Estate* (Ohio) held that the right of a surviving coowner of savings bonds is a contract right controlled by the pertinent regulations governing savings bonds, not by state statutes concerning descent and distribution. The statutory provision involved had the effect in a common disaster case of depriving the second decedent of taking any part of the first decedent's estate when the second decedent's death takes place within 30 days after the death of the first decedent.

(7) *Surviving Beneficiary Not Accountable for Value of the Bonds as an Advancement.*—*Jones* v.

Callahan (N.C.) held that the beneficiary became sole owner under the terms of the bond contract and did not have to account for the value of the bonds as an advancement as they "do not fall within the distinction of an advancement, to wit, an irrevocable gift in praesenti of money or of property, real or personal, to a child by the parent, to enable the donee to anticipate his inheritance or succession of a gift."

Table of Cases

**Ex parte Little* (Ala. S. Ct. 1953) 67 S. 2d 818
***Chambless* v. *Black, et al.* (Ala. S. Ct. 1948) 35 S. 2d 348
***Lee* v. *Anderson* (Ariz. S. Ct. 1950) 218 P. 2d 732
Myers v. *Hardin* (Ark. S. Ct. 1945) 186 S.W. 2d 925
**Umberger* v. *Westmoreland* (Ark. S. Ct. 1951) 238 S.W. 2d 495
Davis v. *Beach* (Calif. 1946) 168 P. 2d 452[1]
**Conrad* v. *Conrad* (Calif. 1944) 152 P. 2d 221
***Klenck* v. *Crocker First Nat. Bank* (No. 294, 300, Superior Ct., San Francisco Co., Calif., 1942)
In re Raphael's Estate (Calif. 1953) 252 P. 2d 979
Smith v. *Greenburg* (Colo. S. Ct. 1950) 218 P. 2d 514
**In re Stanley's Estate* (Colo. S. Ct. 1938) 80 P. 2d 332
Mason v. *Briley* (Fla. S. Ct. 1945) 21 S. 2d 595
**Knight* v. *Wingate* (Ga. S. Ct. 1949) 52 S.E. 2d 604
***Franklin* v. *Pope* (Ga. Ct. of App. 1950) 59 S.E. 2d 726
Frank F. Kibler v. *Hattie E. Laughlin, et al.* (Dist. Ct., 7th Dist., Canyon Co., Ida., Apr. 11, 1956)

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[1] The report contains an incorrect statutory citation. It refers to 31 U.S.C.A. Section 747 ff whereas the proper citation is 31 U.S.C.A. Section 757c.

**In re Estate of August P. Ohlin* (No. 43–C–2720, Circuit Ct., Cook Co., Ill., 1943)

In re Estate of Orson S. Killick (Circuit Ct., Cook Co., Ill., Jan. 12, 1944)

**Stein, Adm'r. Estate of Chas. J. Stein* v. *Anna Ida Stein* (No. 2157, Circuit Ct., Posey Co., Ind., Oct. 2, 1948)

**In re Estate of Clara Courtney* (Probate No. 4916, Dist. Ct. for Fayette Co., Ia., 1944)

In re Estate of Emma C. Logan (No. 19,710, Dist. Ct. for Scott Co., Ia., 1944)

**In re Murray's Estate* (Iowa S. Ct. 1945) 20 N.W. 2d 49

***Hill* v. *Havens* (Iowa S. Ct. 1951) 48 N.W. 2d 870

**In re Clemmons' Estate* (Iowa S. Ct. 1951) 49 N.W. 2d 883

**Lemon* v. *Foulston* (Kans. S. Ct. 1950) 219 P. 2d 388

**Succession of Tanner* (La. Ct. of App. 1946) 24 S. 2d 642[*]

Harvey v. *Rackliffe* (Me. S. Ct. 1945) 41 A. 2d 455

Reynolds v. *Reynolds* (S.J. Ct. Mass. 1949) 90 N.E. 2d 338

**Josephine Holden Murdock* v. *Ina M. Spencer* (Norfolk Probate No. 112529, Mass., June 1947)

Charlton v. *Charlton* (No. 40,777, Circuit Ct., Kent Co., Mich., 1938)

**Myers* v. *Laird, et al.* (Miss. S. Ct. 1957) 93 S. 2d 828

Alda Groce Cox v. *Federal Reserve Bank of St. Louis and Monzel G. Evans, Admx.* (Civil No. 2519, Dist. Ct. of U.S., E.D., Mo., June 1944)

**Coleman, Exec'r.* v. *Abbie Ella Shankland, et al.* (Missouri 1948, No. 22256–D, Circuit Ct., City of St. Louis)

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[*] Cf. *Succession of Geagan (La. S. Ct. 1947) 33 S. 2d 118.

*Valentine v. St. Louis Union Trust Co. (Mo. S. Ct., Div. No. 1, 1952) 250 S.W. 2d 167

Kate Farrell v. *H. J. Coleman* (Dist. Ct., 13th Dist., Yellowstone Co., Mont., April 27, 1942)

In re Estate of Anna Donohoe (Probate No. 3323, Holt Co., Nebr., 1947)

Stephens v. First Nat. Bank of Nevada, et al. (Nev. S. Ct. 1948) 196 P. 2d 756

Franklin Washington Trust Co. v. *Beltram* (N.J, 1943) 29 A. 2d 854.

Reynolds v. *Danko* (N.J. 1944) 36 A. 2d 420

In re Estate of Andrew S. Levy (Orphans Ct., Camden Co., N.J., March 10, 1944)

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In re Hager's Estate (N.Y. 1943) 45 N.Y.S. 2d 468

In re Willoughby's Will (N.Y. 1943) 45 N.Y.S. 2d 177

Matter of Laundree (N.Y. 1950) 100 N.Y.S. 2d 145, 146

In re Tivider's Will (N.Y. 1954) 135 N.Y.S. 2d 351

Commercial Nat. Bank of Charlotte v. *Frederickson* (N.C. S. Ct. 1945) 34 S.E. 2d 402

Ervin v. *Conn* (N.C. S. Ct. 1945) 34 S.E. 2d 402

Jones v. *Callahan* (N.C. S. Ct. 1955) 89 S.E. 2d 111

In re Kaspari's Estate (N. Dak. S. Ct. 1955) 71 N.W. 2d 558

In re Estate of Louis Di Santo (Ohio S. Ct. 1943) 51 N.E. 2d 639

Lauferweiler v. *Richmond* (Ohio 1942) 22 Ohio Op. 265

In re Reiner's Estate (Ohio 1952) 106 N.E. 2d 94

In re Gilger's Estate (Ohio 1952) 109 N.E. 2d 333

Waltenberger v. *Pearson, et al.* (Ohio 1948) 77 N.E. 2d 491

Barton v. *Hooker* (Okla. S. Ct. 1955) 283 P. 2d 514

****In re Estate of Agnes Mellott Dockhorn** (No. 1577-D, County Ct., Garvin Co., Okla., 1945)

***Thomas v. McGroarty, Adm'x.** (Pa. 1950) 69 District and County Reports 108

United States* v. *Dauphin Deposit Trust Co. (M.D., Pa. 1943) 50 F. Supp. 73

In re Graham's Estate (Pa. 1954) 3 District and County Reports 2d 218

Hinson* v. *Plowden (W.D., S.C. 1950) 91 F. Supp. 836

***In re Estate of Carl Hyman** (Probate Ct., Florence Co., S.C., June 4, 1948)

***Messer, Adm'r. v. Hillyer** (Circuit Ct., Hamlin Co., S. Dak., June 1948)

Mitchell* v. *Edds (Tex. S. Ct. 1945) 184 S.W. 2d 823

***McFarland v. Phillips** (Tex. 1952) 253 S.W. 2d 953

***Hott v. Warner, et al.** (Wisc. Sup. Ct. 1954) 67 N.W. 2d 370

In re Will of Celia Breslauer (No. 233-559, Milwaukee Co., Wisc., Nov. 1, 1944)

***Berman v. Frendel** (S. Jud. Ct. of Me. 1959) 148 A. 2d 93

***Matter of the Estate of Lillian Cochran, Dec'd** (Pa. S. Ct. 1960) 159 A. 2d 514

Additional citations dealing with (3) of Appendix:

Roman et al.* v. *Smith (S. Ct. Ark. 1958) 314 S.W. 2d 225

In re De Nat's Estate (Sur. Ct. N.Y. County 1958) 179 N.Y.S. 2d 522

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